

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
COLUMBUS DIVISION

INN FOODS, INC.,

Plaintiff,

vs.

TANNER ENTERPRISES, INC., and
MARTHA M. TANNER,

Defendants.

Case No.: 2:11-cv-231

PLAINTIFF'S MOTION FOR ISSUANCE OF PRELIMINARY
INJUNCTION AND MOTION TO CONSOLIDATE THE TRIAL ON THE
MERITS WITH HEARING ON PRELIMINARY INJUNCTION

Plaintiff, Inn Foods, Inc., by and through its undersigned counsel, hereby moves this Court for entry of a Preliminary Injunction against Defendants enforcing the statutory trust pursuant Section 5(c) of the Perishable Agricultural Commodities Act¹ by segregating all trust assets of Tanner Enterprises, Inc. This Motion is supported by the Affidavit of Hilda Anaya, Accounts Receivable Clerk of Inn Foods, Inc., and the Memorandum of Law, each of which has been filed contemporaneously herewith.

Moreover, the Plaintiff requests that this Court consolidate the hearing on the Motion for a Preliminary Injunction with the trial on the merits pursuant to Rule 65(a)(2), Fed.R.Civ.P., which provides that:

¹ 7 U.S.C. §499e(c)(4)

Before or after the commencement of the hearing of an application for a preliminary injunction, the court may order the trial of the action on the merits to be advanced and consolidated with the hearing of the application.

The District Court has discretion as in determining whether or not consolidation of the Preliminary Injunction hearing with the trial is appropriate.² Plaintiff submits that consolidation in this case is appropriate with respect to its claims under PACA, and that consolidation will conserve the time and resources of the Court and of the parties.

WHEREFORE, Plaintiff requests that the Court enter a Preliminary Injunction enforcing the statutory trust pursuant Section 5(c) of the Perishable Agricultural Commodities Act by segregating all trust assets of Tanner Enterprises, and that this Court enter an Order consolidating the hearing on the Preliminary Injunction with the trial on the merits pursuant to Rule 65 (a)(2), Fed.R.Civ.P.

² See *Air Line Pilots Assn., Int'l v. Alaska Airlines, Inc.*, 898 F.2d 1393 (9th Cir., 1990).

Respectfully submitted on Tuesday, March 15, 2011.

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